

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MAIL PROCESSING NETWORK
RATIONALIZATION SERVICE CHANGES, 2012

DOCKET No. N2012-1

**THE UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO THE
AMERICAN POSTAL WORKERS UNION MOTION TO STRIKE**
(July 31, 2012)

On July 24, 2012 the American Postal Workers Union ("APWU") filed a motion to strike page 67 of the Reply Brief of the United States Postal Service ("Postal Service"). APWU claims that the Postal Service presented inappropriate extra-record information in the form of revised revenue/contribution change estimates, which cannot be admitted into evidence.¹

The revised estimates were not offered as evidence, but instead merely provided commentary designed to illustrate the impact of an error uncovered while responding to Presiding Officer's Information Request ("POIR") No. 9, Question 1. The Postal Service never relied upon the estimates in its arguments, and even acknowledged that the revenue/contribution change estimates did not constitute record evidence.² Consequently, the Postal Service opposes the APWU's motion and requests that the Commission deny it.

¹ Docket No. N2012-1, American Postal Workers Union, AFL-CIO, Motion to Strike a Portion of the USPS Reply Brief, at 1 ("Motion to Strike") (July 24, 2012).

² Docket No. N2012-1, Reply Brief of the United States Postal Service ("Reply Brief"), at 67 (July 20, 2012)

Background

At the beginning of this proceeding, witness Elmore-Yalch and ORC International provided three data files, which were submitted as USPSLR-N2012-1/NP1. These data files described the variables used to calculate the percentage change in mail volume expected to result from proposed adjustments to certain service standards. The information within these data files was used by witness Whiteman to estimate the impact of the changed service standards on revenue and contribution.³

In response to POIR No. 1, Question 18a and POIR No. 4, Question 10, ORC International provided additional information related to the content of the original data files. Responses to these requests were filed on January 13, 2012 and February 21, 2012 respectively. Further, on April 23, 2012, in response to POIR No. 7, Question 7, ORC International provided three additional data files that contained extra variables, as requested by the Presiding Officer.⁴ The Postal Service expected that these additional files would allow the Commission to conduct its own analysis of the information presented by witness Elmore-Yalch and ORC International.

Due to apparent problems encountered during the Commission's attempts to replicate witness Elmore-Yalch's results, the Presiding Officer issued POIR No. 9, Question 1, on May 31, 2012.⁵ This question asked that witness Elmore-

³ See Docket No. N2012-1, Direct Testimony of Greg Whiteman, USPS-T-12, at 22 (December 5, 2011).

⁴ See Docket No. N2012-1, United States Postal Service Notice of Filing Supplement to Library Reference USPS-LR-N2012-1/NP1 (April 23, 2012).

⁵ Docket No. N2012-1, Presiding Officer's Information Request No. 9, Question 1, at 1-2 (May 31, 2012).

Yalch explain the discrepancies between a volume forecast generated by the Commission (presumably using ORC International's data) and the volume forecast contained in witness Elmore-Yalch's testimony.⁶ To resolve these issues, the Postal Service and ORC International planned to conduct a technical conference on June 29, 2012. Instead, during the hearing on June 28, 2012, witness Elmore-Yalch was asked to provide executable program files that documented the steps that ORC International took to create the estimated volume forecasts.⁷ The Commission reiterated this request in Order No. 1406, instructing the Postal Service to provide its response no later than July 20, 2012.⁸

In compliance with Order No. 1406, the Postal Service filed a response to POIR No. 9, Question 1, at 9:42pm on July 19, 2012.⁹ In that response, the Postal Service explained that while preparing the response, witness Elmore-Yalch and ORC International identified an error in the volume forecast for consumers, which was the result of missing correspondence volume data for certain respondents.¹⁰ As explained in the response to POIR No. 9, Question 1, correction of this error showed a decrease in the expected response from consumers to changes in First-Class Mail service standards.¹¹ The error was

⁶ *Id.* ORC International and its statisticians reviewed the materials provided in POIR No. 9, Question 1, but were unable to absolutely ascertain, beyond differences in the way missing data was being handled, why the Commission's volume forecast differed from ORC International's. See Docket No. N2012-1, Tr. Vol. 12 at 4482-4484.

⁷ See Docket No. N2012-1, Tr. Vol. 12 at 4501.

⁸ Docket No. N2012-1, Order No. 1406: Directing the Postal Service to Provide a Responsive Answer, at 4 (July 18, 2012).

⁹ Docket No. N2012-1, Response of United States Postal Service Witness Elmore-Yalch to Presiding Officer's Information Request No. 9, Question 1, as Amended by Tr. Vol. 12 at 4501 (July 20, 2012). Although the Postal Service filed the response to POIR 9, Question 1 on the evening of July 19, it was not officially accepted by the Commission until the morning of July 20.

¹⁰ *Id.*

¹¹ *Id.* at 5.

corrected in the executable program files provided in witness Elmore-Yalch's response to POIR No. 9, Question 1.

The Postal Service sought to make the response to POIR No. 9, Question 1 available as soon as possible, so that participants would have the benefit of that response. The impact of the error on witness Whiteman's revenue/contribution change estimates was, however, not known until after the response to POIR No. 9, Question 1 was filed. This information became available later in the day on July 20, 2012. Understanding that the Commission would be using the corrected program files to complete its review of the Postal Service's proposal, and desiring to avoid potential confusion, the Postal Service included the adjusted estimates in its Reply Brief. However, this information was not relied upon by the Postal Service in its arguments, and was included to provide an illustration of how the corrected program files could affect other parts of the Commission's analysis.

Argument

According to rule 3001.21(c) of the Commission's Rules of Practice & Procedure, motions to strike are "requests for extraordinary relief."¹² Here, APWU has requested that page 67 be stricken from the Reply Brief, because the Postal Service has presented revised revenue estimates that "cannot be admitted to the record."¹³ The APWU claims that allowing the Postal Service to include these estimates in its Reply Brief, after the evidentiary record has closed,

¹² 39 C.F.R. § 3001.21(c).

¹³ Motion to Strike, *supra* note 1, at 5.

would violate the due process rights of the APWU and other participants.¹⁴

However, as explained below, and in light of the exceptional circumstances at play here, the Commission should decline to take the extraordinary step of striking page 67 from the Reply Brief.

At the outset, it is important to note that the Postal Service is well aware of when the evidentiary record closed, and that absent an effort to reopen the record, it would be inappropriate for participants to offer new evidence at this late date. Indeed, the Postal Service acknowledged in its Reply Brief that the adjusted revenue/contribution estimates were “not record evidence.”¹⁵

Significantly, the Postal Service did not rely on the adjusted estimates in any of its arguments, deliberately placing the material in a subsection of its Reply Brief entitled “Supplement.” Moreover, as the Postal Service noted, “[w]hile not record evidence, the Commission will be able to calculate from materials filed by witness Whiteman . . . that the error uncovered during investigation of the POIR9, Q1 response changes his final estimates for the total market research estimates of loss . . . ”¹⁶

Given the potential for additional confusion, the Postal Service decided that it was necessary to present the revised revenue/contribution estimates to the Commission. While it would have been optimal to provide this information in an updated response to POIR No. 9, Question 1, time constraints on July 20, 2012 (the due date for reply briefs) prevented the Postal Service from preparing a supplemental filing. Consequently, the Postal Service decided to include the

¹⁴ *Id.* at 4.

¹⁵ Reply Brief, *supra* note 2, at 67.

¹⁶ *Id.*

adjusted revenue/contribution estimates in a short, non-argumentative subsection of its Reply Brief.

The updated revenue/contribution estimates represent nothing more than commentary designed to facilitate the Commission's use of the executable program files that it requested in POIR No. 9.

Conclusion

Since the Postal Service did not rely on the revenue/contribution estimates in its arguments, acknowledged that the estimates included in its Reply Brief do not constitute record evidence, and intended only to furnish additional background information to enable the Commission to replicate the market research results, the Postal Service requests that the Commission deny the APWU's motion to strike page 67 of the Postal Service's Reply Brief.

Respectfully submitted,

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July 31, 2012